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1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF NEW MEXICO
 3 SECURITIES AND EXCHANGE COMMISSION,
 4 Plaintiff,
 5 vs. NO: 12-257
 6 LARRY A. GOLDSTONE,
 7 CLARENCE G. SIMMONS, III,
 8 and JANE E. STARRETT,
 9 Defendants.

10 VOLUME 2
 11 DEPOSITION OF CYNTHIA REINHART
 12 December 20, 2012

13 9:09 a.m.
 14 201 Third Street, Northwest, Suite 2200
 15 Albuquerque, New Mexico

16 PURSUANT TO THE FEDERAL RULES OF CIVIL
 17 PROCEDURE, this deposition was:
 18 TAKEN BY: MR. JERRY MARKS Attorney for the Defendant
 19 Starrett

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 21 REPORTED BY: Jennifer Bean, FAPR, RDR-RMR CCR #94
 22
 23
 24 Job No.: 55244
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1 APPEARANCES
 2 For the SEC:
 3 MR. GREGORY A. KASPER
 4 MR. STEPHEN C. McKENNA
 5 United States Securities and Exchange Commission
 6 1801 California Street
 7 Denver, CO 80202

8 For the Defendants Goldstone and Simmons:

9 MR. RANDALL R. LEE
 10 MS. JESSICA FREIHEIT KURZBAN (via telephone)
 11 MR. JOHN A. VALENTINE (via telephone)
 12 WILMERHALE
 13 350 S. Grand Avenue
 14 Los Angeles, CA 90071

15 For the Defendant Starrett:

16 MR. JERRY L. MARKS
 17 MR. ROBERT J. LIUBICIC
 18 MS. ELENA KILBERG (via telephone)
 19 MILBANK TWEED HADLEY & McCLOY
 20 601 South Figueroa Street
 21 Los Angeles, CA 90017

22 For KPMG:

23 MR. GEORGE A. SALTER
 24 MR. PETER J. DENNIN
 25 HOGAN LOVELLS
 26 875 Third Avenue
 27 New York, NY 10022
 28 MR. STEVEN E. GALLOTTA
 29 MR. JOSEPH F. WARGANZ
 30 KPMG
 31 919 Third Avenue
 32 New York, NY 10022

33 Also Present: Mr. David Brown, Videographer
 34
 35

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1 it's open-ended, it is worded in such a way that
 2 Citibank is reserving its rights, we would have
 3 required the company to communicate with Citibank and
 4 obtain a full and unequivocal (sic) waiver to
 5 ensure that Citibank did not declare an event of
 6 default that would impact the financial statements
 7 and our auditor's report.

8 Q. And you've had an opportunity to review the
 9 letter that's page 2 of Exhibit 98, is that right?

10 A. Yes.

11 Q. Can you tell me what you understand the
 12 letter to convey?
 13 A. It's a letter from Citibank to Mr.
 14 Goldstone and Mr. Simmons and Nate Fellers -- Mr.
 15 Fellers -- that is memorializing a conversation, and
 16 expressly telling the company that it has failed to
 17 perform its obligations under the agreements between
 18 Citibank and the company. And so, therefore,
 19 Citibank is now telling the company that it has a
 20 right to declare an event of default. And that any
 21 forbearance on their part up to this point shouldn't
 22 be construed as waiving any provision in the
 23 agreement.

24 Q. As you sit here today, do you believe that
 25 knowledge of this letter would have had any impact on

1 2007 audit raise?
 2 MR. LEE: Objection to form.
 3 A. Sitting here today, knowing that this
 4 letter was not provided to us, it does raise doubts
 5 in my mind about the -- management's ethics and
 6 integrity with respect to its dealings with us as the
 7 external auditors.

8 Q. Other than being -- strike that.

9 You can put that away.

10 Ms. Reinhart, I'm now going to hand you

11 what's been previously marked as Exhibit 97. Can you
 12 take a look at that document?

13 A. Yes.

14 Q. Have you seen this document before?

15 A. Yes.

16 Q. When did you first see it?

17 A. In 2009, September perhaps

18 Q. And did you see it during the course of the
 19 KPMG's 2007 audit work?

20 A. No.

21 Q. What about during the restatement period?

22 A. No.

23 Q. Have you had an opportunity to look at the
 24 document?

25 A. Yes.

334
 1 the going concern analysis conducted by KPMG during
 2 the course of the 2007 audit?

3 A. Yes.

4 Q. And what impact do you believe it would
 5 have had on that analysis?
 6 A. Well, sitting here today, it specifically
 7 is communicating that the company was not meeting its
 8 margin calls on a timely basis. And that factor
 9 would need to be considered by the company in its
 10 analysis, and documented and evaluated, and at
 11 certainly a minimum concluded upon by the company and
 12 by KPMG.

13 MR. LIUBICIC: Objection, move to strike
 14 the answer as nonresponsive.

15 Q. As you sit here today, do you believe that
 16 it's possible that it would have -- that the
 17 knowledge of this letter during the course of the
 18 2007 audit would have caused KPMG to reach a
 19 different conclusion regarding going concern?

20 MR. LEE: Objection, objection to form.

21 A. Yes.

22 Q. You know, as you sit here today, other than
 23 as it affects the OTTI and going concern analyses,
 24 what, if any, concerns does Thornburg's failure to
 25 provide this letter to KPMG during the course of the